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6

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 * * *


10 UNITED STATES OF AMERICA,)	2:11-CR-00316-GMV-CWH
)	
11 Plaintiff,)	
)	
12 v.)	MOTION TO SET ASIDE
)	FORFEITURE FOR FAILURE TO
13 DAVID THIRIOT,)	GIVE PROPER NOTICE
)	
14 Defendant.)	
)	

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16 Certification: This undersigned counsel hereby certifies
17 that this motion is timely filed.

18 COMES NOW Movant Douglas P. Thiriot, by and through his
19 attorney Daniel Markoff, Esq., and moves this Court for an Order
20 setting aside the forfeiture of a certain Colt 1911 A1 pistol.
21 This Court entered a Final Order of Forfeiture on August 27, 2012,
22 forfeiting said pistol, stating that notice was published in
23 accordance with law. However, the "constructive" notice was by
24 publication on the government internet. This gave no notice to
25 Movant Douglas Thiriot who is the owner of said Colt pistol, whose
26 name and address were readily available to the Government.
27

This motion is based on the points and authorities and Affidavits of Douglas P. Thiriot and Lane T. Thiriot attached hereto and made a part hereof.

DATED this 1 day of August, 2013.


Daniel Markoff, Esq.
 Counsel for Movant
 Douglas P. Thiriot

POINTS AND AUTHORITIES

Movant Douglas P. Thiriot is the lawful owner of the 1911 A1, .45 caliber Colt pistol, serial number 924292.

This pistol was stolen from Movant by Defendant DAVID THIRIOT, who happened to be Movant's son. As the record in this case shows, Defendant THIRIOT pleaded guilty to unlawfully having said firearm in his possession. As a result of that change of plea on April 9, 2012, this Court entered a preliminary order of forfeiture pursuant to FRCRP 32.2(b)(1) and (2) and 18 USC § 924(d)(1) and 28 USC § 2461(c).

In this Court's Final Order of Forfeiture dated August 27, 2012, this Court made the specific finding that the notice of forfeiture was published in the government's internet forfeiture site from April 11, 2012 to May 10, 2012 supposedly notifying any third party of their right to petition this Court. The Court found no petitions were filed and therefore, forfeited the pistol.

As far as publication of constructive notice to third parties is concerned, that indeed was done. However, that is short of what the Rules require to be done when the owner of the property is reasonably known.

FRCRP 32.2(b)(6)(A) states,

"Publishing and Sending Notice.

If the Court orders the forfeiture of specific property, the government must published notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceedings."

The Rule further provides that sometimes substitute property may qualify for the forfeiture.

1 The reason movant is claiming an interest in this
2 particular gun is because it belonged to his father, who brought it
3 home from World War II. This particular piece of property,
4 therefore, has substantial family, historical and sentimental
5 value. (See Exhibit A, Affidavit of Movant Douglas P. Thiriot and
6 Exhibit B, Affidavit of Lane T. Thiriot.)

7 It should be noted, as set forth in Exhibit A, that
8 Movant is a resident of Lincoln County, Nevada, and never received
9 any legal notice that this firearm was to be forfeited to the U.S.
10 government. Yet, it should also be noted that the government had
11 information from police reports in this case that Douglas Thiriot
12 had an ownership interest in this firearm. (See Exhibit C, Police
13 Report.)

14 Likewise, actual notice was given to the Las Vegas
15 Metropolitan Police Department that the family was interested in
16 the return of this family heirloom. (See Exhibit D.)

17 Based on the foregoing, it is respectfully submitted that
18 the Final Order of Forfeiture was entered improperly and should,
19 therefore, be set aside to afford Movant his due process rights to
20 the property in question.

21 Alternatively, Movant proposes that in as much as a
22 forfeiture order has already been entered, and if this Court is not
23 inclined to entertain Movant's claim, that he be allowed to

24 . . .


25 . . .

26 . . .

1 substitute other property in exchange for the family heirloom as a
2 compromise to further litigation.

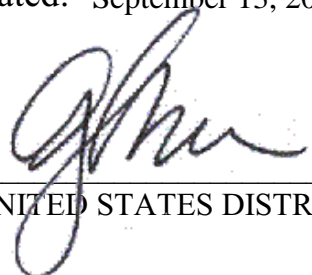
3 DATED this 1 day of August, 2013.

4 Respectfully submitted,

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6 
7 Daniel Markoff, Esq.
8 Counsel for Movant
9 Douglas P. Thiriot

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11 **IT IS SO ORDERED**

12 Dated: September 13, 2013

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15 UNITED STATES DISTRICT JUDGE
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That on August 5, 2013, she served a copy of the attached MOTION TO SET ASIDE FORFEITURE FOR FAILURE TO GIVE PROPER NOTICE to the persons hereinafter named by utilizing the U.S. District Court, District of Nevada, CM/ECF system:

Connie Jones